**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

**INCOME TAX REFERENCE NO. 147 OF 1993.**

The Director of Income-tax
(Exemption) ... Applicant.

V/s.

Shri J.J. Charity Fund ... Respondent.

Shri A.N. Kotangale, Senior Counsel with D.A. Dubey for the applicant.

Shri P.D. Damodar i/b Kanga & Co. for the respondent.

**CORAM : V.C.DAGA AND A.S.AGUIAR, JJ.**

**DATED : 18.7.2005**

**P.C. :**
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. By this reference under section 256 of the Income-tax Act, 1961, the Income Tax Appellate Tribunal has referred the following questions of law for the opinion of this Court:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the deficit of earlier years should be set off against the surplus determined in the current year?

. Learned counsel for the parties agreed that the aforesaid issue has already been answered by this Court in the judgment in the case of **C.I.T.**

**vs. Institute of Banking (2003) 264 ITR 110** in the affirmative. In this view of the matter, we answer the issue in the affirmative i.e. in favour of the assessee and against the revenue.

. Reference stands disposed of with no order as to costs.

**(A.S.AGUIAR, J.)** **(V.C.DAGA, J.)**